Filed 11/24/08 In re D.D. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re D.D., a Person Coming Under the Juvenile Court Law.	B205576 (Los Angeles County Super. Ct. No. CK61563)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent, v. T.D., Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Terry Truong, Referee. Affirmed.

Joseph D. Mackenzie, under appointment by the Court of Appeal, for Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Byron G. Shibata, Associate County Counsel, for Respondent.

INTRODUCTION

Father, T.D., appeals from the judgment terminating parental rights to his son D.D. (Welf. & Inst. Code, § 366.26).[1] He challenges the sufficiency of the evidence of adoptability and contends the trial court erred by not considering a permanent plan other than adoption by the child's paternal grandmother. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Los Angeles Department of Children and Family Services (DCFS) initiated dependency proceedings on November 23, 2005, after five-month-old D.D.'s mother was arrested and jailed for child endangerment, disorderly conduct, possession of drug paraphernalia, and providing false identification to a police officer. D.D. was allowed to remain in the home of his paternal grandmother, with whom he and his mother had been living before her arrest. At the time, Father was incarcerated locally for a parole violation.

D.D. was declared a dependent child on January 17, 2006, and reunification services were ordered for both parents. The court ordered D.D.'s continued placement with his paternal grandmother.

The six-month review hearing was held July 12, 2006. The status review report indicates D.D., then one year of age, was "neither developmentally delayed nor a client of Regional Center . . . [and appeared] to be developing age-appropriately." His feet were "turned inward" and he had been referred to a physician who prescribed casting him for two to three weeks.

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[1] Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

By the twelve-month hearing, neither parent had complied with the case plan. The DCFS recommendation was to terminate reunification services and free the child for adoption. Father was again incarcerated, and he waived his appearance. Mother did not appear. Counsel for both parents objected "for the record on the termination of [ ] family reunification services." The juvenile court terminated family reunification services and scheduled a permanency planning hearing.

The section 366.26 hearing was continued on several occasions.[2] The hearing concluded December 10, 2007. Both parents had previously waived their appearance. Father's counsel conceded his client, when incarcerated, did not participate in any court-ordered reunification programs. Counsel did not object to the admission of DCFS reports or call any witnesses.

Evidence submitted by DCFS demonstrated the paternal grandmother had the ability and willingness to adopt D.D. and meet his needs. The social worker discussed adoption with the grandmother and was satisfied the caregiver understood the responsibilities. There was no recent mention of D.D.'s previously diagnosed foot problem. The medical report from an examination in May 2007, just before D.D.'s second birthday, indicated "'his development is his major medical issue. He is below average for his cognitive and language activities, average for motor.'" A Regional Center evaluation four months later concluded that while D.D.'s receptive and expressive language skills were approximately six months behind his chronological age, his cognitive and motor skills placed him in the 75th percentile and he ranked in the 91st percentile for social/emotional skills.

The court found by clear and convincing evidence that D.D. was likely to be adopted, terminated the parents' rights, and ordered D.D. placed for adoption. Only father has appealed.

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[2] The adoptive home study had not been completed by the first scheduled hearing date. Also, D.D.'s birth certificate did not identify T.D. as the father. Accordingly, the trial court continued the hearing and ordered DCFS to perform due diligence to identify, locate, and serve notice on an unknown father.

DISCUSSION

1. Substantial Evidence Supports the Finding of Adoptability.

Although father did not object in the trial court to the sufficiency of the evidence to support the finding that D.D. is likely to be adopted, he has done so for the first time on appeal. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 622.) This court must affirm that finding if "the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence" that it is likely the dependent child will be adopted. (*Id.* at pp. 623-624.)

Unlike the situation in *Brian P.*, where there was neither a prospective adoptive parent nor an adoption assessment report as mandated by section 366.21, subdivision (i), the juvenile court here was presented with both. The required assessment demonstrated that D.D.'s paternal grandmother, with whom the child was living even before dependency proceedings were initiated, desired to adopt her grandson and was a committed and suitable adoptive parent. (§ 366.21, subd. (i)(1)(D), (E).)

The assessment included evaluations of D.D.'s "medical, developmental, scholastic,[3] mental, and emotional status." (§ 361.21, subd. (i)(1)(C).) While D.D. still exhibited speech delays at the time of the selection and implementation hearing, he ranked in the 75th percentile in cognitive and motor skills and in the 91st percentile in social/emotional skills. As part of the Regional Center assessment, the paternal grandmother reported D.D.'s "milestones included sitting at 6/8 months, creeping at 10 months, and walking at 14 months, and he is presently running in his home environment."

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[3] D.D. was not yet school age, so scholastic achievement was not an issue. He did attend a daycare center five days a week, and the staff there noted he "gets along well with the other children and [ ] it is a pleasure to have him in day care."

Father nonetheless contends that because "the present and anticipated consequences of [the child's] medical and developmental factors" were not adequately addressed in the assessment report or considered by the juvenile court, the adoptability finding must fail. However, "[n]owhere in the statutes or case law is certainty of a child's future medical condition required before a court can find adoptability." (*In re Helen W.* (2007) 150 Cal.App.4th 71, 79.) Moreover, "a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1650.) Substantial evidence supports the adoptability finding here.

2. The Juvenile Court Was Not Required to Make an Express Finding of General Adoptability.

Juvenile courts on occasion make express findings of both "general" and "specific" adoptability in dependency proceedings where prospective adoptive parents have been identified. (See, e.g., *In re T.S.* (2003) 113 Cal.App.4th 1323, 1327-1328; *In re Helen W., supra,* 150 Cal.App.4th at pp. 79-81.) A reasonable inference from the evidence here is that D.D.'s age and many attractive characteristics make it likely he will be adopted by someone, if not his paternal grandmother. (*Id.* at p. 80.) An express finding to this effect was not required by statute or case law.[4]

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[4] Similarly, the juvenile court was not required to consider whether there was a legal impediment to the paternal grandmother's adoption. (Compare, *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061 [when a total needs "child is deemed adoptable based solely on the fact that a particular family is willing to adopt . . . the trial court must determine whether there is a legal impediment to adoption"].)

3. The Juvenile Court Was Not Required to Consider a Permanent Plan Other than Adoption.

For dependent children who cannot be reunited with their parents, adoption is the preferred permanent plan. (§ 366.26, subd. (b)(1).) Where, as here, the juvenile court concludes by clear and convincing evidence that a dependent child is likely to be adopted, the court considers legal guardianship or a permanent plan less stable than adoption only if one of the statutory exceptions to adoption applies. (§ 366.26, subd. (c)(1).) No such exception applies here.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

DUNNING, J.*

We concur:

MALLANO, P.J.

ROTHSCHILD, J.

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* Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.